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DOCKET NO. 56385

APPLICATION OF NEW WATER	§	PUBLIC UTILITY COMMISSION
SYSTEMS, INC. AND DERBY ING LLC	§	
FOR SALE, TRANSFER, OR MERGER	§	OF TEXAS
OF FACILITIES AND CERTIFICATE		
RIGHTS IN FRIO COUNTY		

**COMMISSION STAFF'S RECOMMENDATION OF SUFFICIENCY OF NOTICE AND
ON THE TRANSACTION AND MOTION TO DISMISS**

On March 19, 2024, New Water Systems, Inc. (New Water Systems) and Derby ING LLC (Derby ING) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Frio County.

On June 6, 2024, the administrative law judge (ALJ) filed Order No. 3, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on sufficiency of notice and a proposed procedural schedule by June 13, 2024. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON NOTICE

Staff has reviewed Applicants' proof of notice filed on April 25, 2024, and as detailed in the attached memorandum from Jaspinder Singh of the Infrastructure Division, recommends that the notice be deemed deficient. Applicants did not provide proof of notice to each landowner of tract of land that is at least 25 acres and is wholly or partly located in the requested area.

II. RECOMMENDATION TO DENY THE TRANSACTION FROM PROCEEDING

Staff has reviewed the Applicants' application and, as detailed in the attached memorandum from Mr. Singh, recommends that the transaction be denied approval from proceeding for failure to demonstrate the technical and managerial capability to provide continuous and adequate service to the requested area under 16 TAC § 24.239(h). As referenced in Mr. Singh's memorandum, Staff has reviewed Commission records and has found no entity listed under the name "New Water Systems, Inc." in the Commission's Public Utility Information Website.¹

¹ Public Water Utility Information Data Base, Search: "New Water Systems," (Public Utility Commission of Texas, 2024)
<https://www.puc.texas.gov/WaterSearch/Search/Find?UtilityName=new+water+systems&RepPartyName=&CCNRcnum=&UtilityTypeId=&OwnershipTypeId=&CountyId=&ActivityStatusId=>

Further, the interchange reflects no applications by New Water Systems for any of the systems listed on New Water Systems' website for which New Water Systems has obtained a certificate of convenience and necessity (CCN) to provide service through such systems.² In fact, this is the only application on file for New Water Systems in which it is seeking to obtain a CCN for the area currently being served by the Derby ING public water system under CCN No. 12931. Notably and of concern to Staff, New Water Systems' website lists service for the Derby NWS, which Staff understands to be in reference to the Derby ING public water system, which New Water Systems is seeking approval to obtain in this proceeding.

In addition, the website also lists additional systems that are being served by New Water Systems, including Fall Branch NWS, Oak Hill NWS, Pleasure Point NWS, Sellers Estates NWS, Solar Village NWS, South Midland NWS, and Warren NWS, none of which are certificated to New Water Systems. Of those systems, two of these systems—Pleasure Point NWS and South Midland NWS—are under a receivership authorized, respectively, by the Texas Commission on Environmental Quality and the 261st Judicial District Court, while the CCNs for these systems remain under the name of these systems' respective owners. Two additional systems—Solar Estates NWS and Warren NWS—have CCNs under another entities' name, thereby indicating that New Water Systems has acquired these systems without submitting an STM application, in violation of Texas Water Code (TWC) § 13.301 and 16 TAC § 24.239. Finally, three of the systems are being operated with no CCN at all. As a result, Staff finds that New Water Systems is serving six systems without proper authorization and appears to be in violation of Texas TWC § 13.242 and 16 TAC § 24.225.

Furthermore, New Water Systems is operating all of these systems without a tariff but nevertheless appears to be charging customers, in violation of TWC § 13.135 and 16 TAC § 24.25.³ Commission records show no tariff associated with the name New Water Systems and no tariff information is listed on the individual pages for each of their systems.⁴

Finally, given the extent and seriousness of these violations, New Water Systems is currently under investigation by the Commission's Division of Compliance and Enforcement for these and potentially other violations of PUC rules and statutes. Until New Water Systems is able

² New Water Systems, (New Water Systems, 2024) <https://newwatersystem.com/>.

³ *Id.*

⁴ *Id.*

to address these extensive issues, it will not meet the technical and managerial requirements to provide adequate and continuous service to the requested service area, and its application will not be sufficient on its merits. As such, Staff recommends that the transaction will not serve the public interest and that the transaction should be denied approval from proceeding.

III. MOTION TO DISMISS

Staff recommends that the transaction be denied from proceeding. Because New Water Systems will not be able to amend its application to overcome the managerial and technical deficiencies described above in a reasonable amount of time and because many of these violations are for systems outside the scope of this application, Staff respectfully requests that the ALJ dismiss the proceeding with prejudice based on other good cause shown pursuant to 16 TAC § 22.181(d)(11).

IV. CONCLUSION

For the reasons discussed above, Staff respectfully requests the entry of an order denying the transaction from proceeding and granting Staff's motion to dismiss. In the alternative, Staff respectfully requests an order finding that New Water Systems' notice is deficient.

Date: June 13, 2024

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on June 13, 2024, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Rowan Pruitt
Rowan Pruitt

Public Utility Commission of Texas

Memorandum

TO: Rowan Pruitt, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: June 13, 2024

RE: Docket No. 56385 – *Application of New Water Systems, Inc. and Derby ING LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Frio County*

1. Application

On March 19, 2024, New Water Systems, Inc. (New Water Systems) and Derby ING LLC (Derby ING) (collectively “Applicants”) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Frio County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, New Water Systems is seeking to obtain a Certificate of Convenience and Necessity (CCN) and approval to acquire facilities and to transfer all of the water certificated service area from Derby ING under water CCN No. 12931.

2. Notice:

Commission staff reviewed the proof of notice filed on April 25, 2024, under item 12. The proof of notice submission didn’t included proof that notice was provided to each landowner of tract of land that is at least 25 acres and is wholly or partly located in the requested area. Therefore, I recommend that the notice be deemed deficient.

3. Factors Considered and Recommendations:

Staff reviewed and determined the application administratively complete on April 18, 2024. Staff recommends that this transaction be denied approval due to failure to demonstrate the technical and managerial capability to provide continuous and adequate service to the requested area under 16 TAC § 24.239(h). New Water Systems’ website ([New Water Systems, Inc. - Home](#)) lists that they operate eight water systems, Derby NWS (CCN No. 12931, CCN to be transferred in this docket), Fall Branch NWS, Oak Hill NWS, Pleasure Point NWS (CCN No. 11734, in receivership), Sellers Estates NWS, Solar Village NWS (CCN No. 13287), South

Midland NWS (CCN No. 13223, in receivership), and Warren NWS (CCN No. 13001). It appears that three of these systems do not have a CCN number. According to Commission records, there is no entity listed under the name "New Water Systems, Inc." and this is the only application that New Water Systems has filed. It is unknown at this time, if New Water Systems is operating the water systems, not in receivership, under a contract or as an owner. New Water System is currently being investigated by the Commission's Division of Compliance and Enforcement.

Although, Mr. Christopher Martin (owner of New Water Systems) has been appointed as a receiver by the 261st Judicial District Court for South Midland County Water System and Pleasure Point through Texas Commission on Environmental Quality (TCEQ) referrals, I believe that New Water Systems will not meet the technical and managerial requirements to provide adequate and continuous service to the requested service area until these issues are addressed. I recommend that this application be dismissed given the seriousness of issues and the time needed to address them.